IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Writ petition NO. 4132 of 1999

Sajan Enterprises Miraj. .. ... Petitioners

vs.

The Commissioner of Income-tax & ors. . ... Respondents

Mr. K. B. Bhujale with Pramod Vaidya
for Petitioners
Mr. A. S. Rao for Respondents.

CORAM: **S. RADHAKRISHNAN**
AND
A. S. AGUIAR JJ.

Date: 13/6/2005

ORAL JUDGMENT (Per S. Radhakrishnan J.).

1. Heard learned counsel for the Petitioners and the Respondents.
2. It appears that the Petitioners had filed an declaration under the Voluntary Disclosure Scheme 1997 (hereinafter referred to as "the scheme"). The Petitioners had under the said scheme filed a declaration on 25th December 1997 disclosing an income of Rs.10 lakhs. It may be noted here that under the scheme the Petitioners are liable to pay entire tax due and payable within a period of three months from the date of filing of the said declaration. On 29th January 1998 the Petitioners had paid Rs.51000/- towards tax

liability and a further sum of Rs.52,000/- on 27.2.1998, totalling a sum of Rs.1,03,000/-. On 26.3.1998 the Petitioners had paid an amount of Rs.2,65,000/- and a further sum of Rs.1000/- on 30.3.1998.

3. The basic dispute dispute in the above petition is that the entire tax liability was not paid within a period of three months as contemplated under the scheme. Mr. Bhujale learned counsel for the Petitioners also fairly does not dispute that the aforesaid payments were made beyond the said period of three months . In this context it would be relevant to quote section 65 and 67 of the said scheme:

> "65(1) A declaration under sub -section (1) of section 64 shall be made to the Commissioner and shall be in such form and shall be verified in such manner as may be prescribed:
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> (2) The declaration shall be signed, -
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> (a) where the declarant is an individual, by the individual himself; where such individual is absent from India, by the individual concerned or by some person duly authroised by him in this behalf; and where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;
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> (b) where the declarant is a Hindu undivided family, by the karta, and where the karta is absent from India or is mentally incapacitated from attending to his affairs, by

any other adult member of such family;

(c) where the declarant is a company, by the managing director thereof, or where for any unavoidable reason such managing director is not able to sign the declaration or where there is no managing director, by any director thereof;

(d) where the declarant is a firm, by the managing partner thereof, or where for any unavoidable reasons such managing partner is not able to sign the declaration, or where there is no managing partner as such, by any partner thereof, not being a minor;

(e) where the declarant is any other association, by any member of the association or the principal officer thereof; and

(f) where the declarant is any other person, by that person or by some other person competent to act on his behalf.

(3) Any person, who has made a declaration under sub – section (1) of section 64 in respect of his income or as a representative assessee in respect of the income of any other person, shall not be entitled to make any other declaration under that sub- section in respect of his income or the income of such other person, and any such other declaration, if made, shall be deemed to be void.

67(1). Notwithstanding anything contained in section 66, the declarant may file a declaration without paying the tax under that section and the declarant may file the declaratthenion and the declarant may pay the tax

within three months from the date of filing of the declaration with simple interest at the rate of two per cent for every month or part of a month comprised in the period beginning from the date of filing the declaration and ending on the date of payment of such tax and file the proof of such payment within the said period of three months.

(2) If the declarant fails to pay the tax in respect of the voluntarily disclosed income before the expiry of three months from the date of filing of the declaration, the declaration filed by him shall be deemed never to have been under this Scheme."

4. By this petition the Petitioners are challenging the the constitutional validity of section 67 of the said scheme to be discriminatory and violative of Article 14 of the Constitution of India. The Petitioners have also prayed that the Respondent ought to have issued a certificate under section 68(2) of the scheme in respect of full amount of the declaration made by the Petitioner firm. Alternatively there sis a prayer that if the court does not accept the said contention that the entire amount should be accepted under the scheme, then the Respondent should be directed to refund the amounts paid on 26th March 1998 and 30th March 1998, totalling to Rs.2,66,000/- along with interest.

5. Shri Bhujale learned counsel for the Petitioners pointed out that

now the issue raised in this Petition has already been concluded by judgment of the Supreme Court in **Hemalata Gargya v. Commissioner of Income Tax and anr. (2003) 259 ITR 1** wherein the Supreme Court has very categorically held that there is nothing in the language of the provisions of the scheme which would justify such a departure. On the other hand, the provisions of section 67(2) make it abundantly clear that if the declarant fails to pay the tax within the period of three months as specified, the declaration filed shall be deemed never to have been made under the scheme. In other words the consequences of non- compliance with the provisions of section 67(1) relating to the payment have been clearly and explicitly provided. The Supreme Court finally directed the Revenue authorities to refund or adjust the amounts already deposited by the assessees in purported compliance with the provisions of the scheme, to the concerned assessees in accordance with law.

6. Shri Rao learned counsel for Respondent states that the Respondent has already adjusted Rs.1,03,000/- , paid within three months, towards various tax liability of the Petitioners. Shri Rao could not controvert that the settlement officer has made it abundantly clear that any amount paid after 90 days cannot be accepted under the scheme, hence the balance amount will have to be refunded

back to the assessee.

7. In the aforesaid facts and circumstances we direct the Respondent to refund the said sum of Rs.2,66,000/- which was paid by the assessee to the Respondent beyond the period of 90 days under the scheme, subject to Petitioners producing necessary proof of such payments. The aforesaid amount shall be refunded within a period of 8 weeks from today and if the Respondent failed to do so the Respondent shall pay interest at the rate of 9% per annum after the period of 8 weeks. Accordingly the rule is made absolute in the above terms, however with no order as to costs.

S. RADHAKRISHNAN J.

A. S. AGUIAR J.

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